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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re ROGELIO I., a Person Coming Under
the Juvenile Court Law.

B167316, B167897
(Los Angeles County
Super. Ct. No. CK39831)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

ADRIANNE G.,

Defendant and Appellant.

APPEALS from orders of the Superior Court of Los Angeles County. Stephen Marpet, Juvenile Court Referee. Affirmed.

Joseph T. Tavano, under appointment by the Court of Appeal, for Defendant and Appellant.

Lloyd W. Pellman, County Counsel, and Pamela S. Landeros, Deputy County Counsel, for Plaintiff and Respondent.

Law Offices of Lisa E. Mandel, Gina Zaragoza-Cruz and David Estep for the Minor.

In these consolidated appeals, Adrienne G., (Mother), the mother of Rogelio I. (born June 1998), appeals from two orders: (1) a May 2, 2003 order denying her petition for modification (Welf. & Inst. Code, § 388) of a March 14, 2002 order terminating family reunification services and setting a selection and implementation hearing; and (2) a June 5, 2003 order terminating her parental rights to Rogelio and freeing him for adoption. We affirm both orders because the juvenile court did not abuse its discretion in denying the petition for modification and Mother's related requests for a bonding study and appointment of an expert, and substantial evidence supports the juvenile court's order terminating parental rights and determining that Mother failed to establish the beneficial relationship exception (*id.*, § 366.26, subd. (c)(1)(A) and the sibling relationship exception (*id.*, § 366.26, subd. (c)(1)(E)) to termination of parental rights. (Further statutory references are to the Welf. & Inst. Code unless otherwise stated.)

FACTUAL AND PROCEDURAL BACKGROUND

In November 1999, 17-month-old Rogelio lived with Mother, his father, Luis I. (Father), and his four older sisters, Fallon G. (born Sept. 1986), Iris I. (born May 1988), Jasmine I. (born May 1989), and Lydia I. (born Oct. 1991).¹ All of the children were detained on November 19, 1999, after Fallon and Iris revealed on November 2 that they had been sexually abused by Father. Iris and Jasmine later told their therapist that there were no rules in the household, the children would do whatever they liked, and Iris ditched school. As of March 2000, Rogelio, Iris, Jasmine and Lydia were in the same foster home of Mr. and Mrs. N. Although Lydia was returned home to Mother in July 2002, and Jasmine was returned home to Mother in March 2003, both Rogelio and Iris

¹ Mother and Father married in 1987. Luis I. is Fallon's stepfather and the father of the four younger children. Neither Fallon's biological father (listed on her birth certificate as Jose C.) nor Luis I. appeared in this proceeding, during which their whereabouts were unknown to DCFS. Luis I. will be referred to as "Father," with the understanding that he is Fallon's stepfather.

remained placed with the N.'s throughout these proceedings. Beginning in 2001, the N.'s expressed a desire to adopt Rogelio and Iris. Fallon, who had many foster care placements over the course of the proceedings, remained in long-term foster care in June 2003.

On November 5, Fallon and Iris were examined by a doctor, who also interviewed them outside Mother's presence. The doctor found no physical evidence of sexual abuse, but believed their reports of abuse by Father, which were consistent with the statements the girls had given to the Los Angeles County Department of Children and Family Services (DCFS) and to the police.

The children were detained on November 19 and placed in a foster home at a confidential location. At the November 24, 1999 detention hearing, Mother was afforded monitored visits. In December 1999, Mother denied knowing about Father's sexual abuse and denied that Fallon and Iris had been abused. DCFS had given Mother referrals for parenting, individual counseling, and sexual abuse counseling, which were initially declined by Mother. But then later in December 1999 she enrolled in parenting and group counseling and requested a referral for sexual abuse counseling, eventually enrolling in the Child Sexual Abuse Program (CSAP) in July 2000. In January 2000, Mother filed for a divorce from Father.

On April 27, 2000, the court made the jurisdictional findings that all five children were dependent children under section 300, subdivisions (a) (physical harm), (b) (failure to protect), (d) (sexual abuse), and (j) (abuse of sibling), and that Fallon was a dependent also under section 300, subdivision (c) (serious emotional damage). The juvenile court found that the initial disclosures of sexual abuse made by Fallon and Iris were true, that Mother was on notice that there was sexual abuse of Iris but failed to take action to protect her, that Mother used inappropriate physical discipline on the children and failed to provide Fallon with dental care. The court further stated that to characterize the family as dysfunctional was an understatement, and that the family "has built itself on a foundation of untruths, on pity, on victimization, on scapegoating of children."

In May 2000, Mother continued to deny the sexual abuse and that she knew that it was occurring. Mother also believed that she did not need counseling and preferred going to church and relying on her faith.

In September 2000 Iris refused visits with Mother after Iris told her that she wanted to be adopted and Mother got angry and stormed out of the visit. During a September after-court visit, Fallon and Iris had a fight about Iris's desire to be adopted; Fallon threatened Iris because she believed that Iris did not respect Mother. During the year 2000, DCFS reported other problems regarding Mother's weekly visits with the children. For example, Mother did not understand the emotional needs of the children and acted with the two older girls as if they were her peers, asking their opinion about Mother's love interests and her Internet dating. In July 2000, Mother had brought unauthorized family members to a visit, and Mother missed two visits in August.

By August 2000, Lydia had been removed from the N.'s home and was placed with another foster family, but she continued to have weekend visits with her siblings at the N.'s home. Lydia was resentful of the love and affection showed to Rogelio by the N.'s and she had pushed him, but she expressed a desire to reunite with her siblings. Because Lydia continued to show resentment toward Rogelio, a January 2001 DCFS report recommended that Lydia not be re-placed with the N.'s because it "might be detrimental to Rogelio's health and well-being."

By the time of the disposition hearing, held over the course of several days in September and October 2000, Mother was enrolled in CSAP and had completed parenting classes with some individual parenting sessions, but she had not enrolled in individual counseling or therapy. At the disposition hearing, the social worker testified that Mrs. N. told her that if the older girls are not at the visit, Mother was not interested in visiting with Rogelio (then two years old) and would interact with him only briefly. If Iris was at the visit, Mother's visit would last for one to three hours, but if Iris was not there, Mother's visit with Rogelio would last 40 minutes. Mother's attorney also informed the court that Mother was concerned because "[a]lthough Mother's been visiting regularly weekly with [Rogelio], she indicates to me that he's developing quite

an attachment, naturally, to the foster family.” Mother requested that her visits with Rogelio be liberalized, but the juvenile court refused.

The October 25, 2000 disposition order removed the children from parental custody and placed them in the care of DCFS for suitable placement. The disposition case plan required Mother to attend individual counseling addressing issues of domestic violence and sexual abuse, and counseling at CSAP. The four girls were ordered to attend individual counseling. Mother and the girls were ordered to attend conjoint counseling when the girls’ therapists deemed it appropriate. Mother was afforded monitored visitation and DCFS had discretion to liberalize visitation. Fallon was also afforded monitored visitation with her siblings.

In November 2000, Mother began individual counseling. In December 2000, the location of the visits was moved to a restaurant. After Mother began a new job, her visits in December 2000 and January 2001 were inconsistent.

At a progress report hearing on January 24, 2001, Mother’s attorney asked for increased visitation time between Mother and Rogelio because Rogelio had been out of Mother’s care for over a year and Rogelio no longer recognized her as his mother. The court ordered an unmonitored four-hour visit between Mother and each of her children before the February 21, 2001 hearing. In February 2001, DCFS reported that when Mother failed to return Rogelio to his foster family on time after his January 2001 unmonitored visit, the foster mother was frantic and thought that Mother had kidnapped him. Mother returned Rogelio an hour and a half late, claiming that she had been stuck in traffic and that she should not have to call the foster parents. DCFS also reported that Lydia, Jasmine and Iris would come back from unmonitored visits exhibiting a bad attitude and using “cuss” words.

On March 1, 2001, the juvenile court ordered that Mother’s visits with the children be monitored. In March and April, Rogelio had monitored visits with Mother and his sisters. Fallon appeared to be very much bonded with Rogelio, showing him love and concern. In April, DCFS reported that Rogelio was adjusting well to his foster parents and appeared to be developing normally, except that his language skills were delayed.

Rogelio began weekly speech therapy sessions, which dramatically improved his communication skills so that he no longer needed such therapy by June 2003. In April 2001, Mother's therapist reported that Mother had missed some counseling appointments and had no insight into her role in the sexual abuse of her children. The CSAP program reported that Mother was in the early stages of addressing issues of abuse.

At the April 25, 2001 six-month review hearing, the juvenile court ordered an additional six months of reunification services. Mother's attorney again asked for unmonitored visitation with Rogelio, as Mother "feels that she is becoming very much estranged from [Rogelio], if not the other children." The juvenile court ordered monitored visitation, but DCFS had discretion to liberalize visitation.

By August 2001, Mother was working three jobs. She had lost her house and was renting a room from a friend. Mother told DCFS that she had no time for counseling, and she was dropped from her domestic violence counseling and from CSAP, but she was reinstated in CSAP in September 2001. In July 2001, Mother also stopped going to individual counseling and told Lydia and a social worker that she was going to Chicago to marry a boyfriend, but this did not happen. Instead, in November 2001 Mother married her employer, Samuel A., whom she had met in July and who had provided her with a home since October 2001. From July 2001 to January 2002, Rogelio had monitored visits with Mother twice a month at a McDonald's restaurant for two hours, with Fallon and Lydia also attending the visits.

In October 2001, DCFS recommended the termination of reunification services and that Rogelio, Iris and Jasmine be referred for adoption. Rogelio was "very attached" to his foster parents. An October 2, 2001 adoption assessment for Rogelio recommended adoption and noted that the foster parents loved him and wanted to adopt him. An October 2001 report from CSAP stated that Mother attended regularly, continued to have issues with the "offender," but that she was working on rebuilding relationships with her children and was "attempting to create a bond with her children." On October 24, 2001, at Mother's request, the juvenile court set the matter for a contested hearing, which was concluded on March 14, 2002, when the court terminated family reunification services.

In January 2002, DCFS reported that Rogelio “appears to have been the least negatively affected by the neglect and abuse occurring in the family prior to DCFS involvement. . . . Rogelio does not appear bonded to his mother, at all, he prefers to play almost the entire time he visits with his mother and sisters, Fallon and Lydia. Fallon and Lydia do appear to enjoy interacting with him, however, the mother does not much play or interact with him. Mother does greet him warmly when she gets there, and then when he eats, however, he hurries through the meal, and rushes to play. The bonding between Mother and son appears to be very minimal.”

DCFS also noted in January 2002 that Mother’s attitude toward Iris vacillated because she previously said she would not object to Iris’s adoption, but Mother recently said that she would “fight” for all of her children, that she had raised them up until their detention, that they had cost her plenty, and she would not give them up easily.

On March 14, 2002, the court terminated family reunification services, also ordering that Mother was to have unmonitored visits with Fallon and Lydia, and that Mother was to have unmonitored day visits with Rogelio. The juvenile court also set a selection and implementation hearing pursuant to section 366.26 for Rogelio, Iris and Jasmine. DCFS was ordered to continue or initiate long-term foster care for Fallon and Lydia. From March to June 2002, Rogelio had unmonitored three-hour Sunday visits with Mother. According to the foster parents, Rogelio came back from the visits “cussing” and said that he heard Mother, Lydia and Fallon “cussing.”

On May 24, 2002, Mother filed a section 388 petition for modification, seeking the return of all of the children. Mother alleged that since the termination of reunification services, her visits with Fallon, Lydia, and Rogelio had gone well; Mother was in conjoint counseling with Lydia and Fallon, and was continuing with her individual and group counseling at CSAP. Mother’s petition stated that attorneys for Lydia and Fallon agreed with her request. The court granted Mother a hearing on her petition for modification, which hearing was concluded on July 11, 2002.

In late May 2002, Mother complained to DCFS about her visits with Rogelio, asserting that she had a right to take him with her to counseling. Mother left a rude

message for the social worker, telling them to expect trouble because they were in violation of the court order.

In July 2002, Mother claimed that in March the foster mother told Rogelio not to call Mother “Mom” or “Mommy,” but “Adrienne.” Mother stated that “I am glad to report that Rogelio is once again addressing me as ‘mommy.’ He now cries when he has to return to the [N.’s] care after our visits.” In July 2002, Fallon told Iris that she did not want to live with Mother because she made her clean the house and watch Rogelio. Fallon also complained to Iris that Mother did not pay any attention to Rogelio during his visits and Fallon had the responsibility for watching Rogelio, who was allowed to “run ‘amok.’”

Mother began counseling in May 2002 with a new therapist, and by July the counselor had seen mother for a total of 10 sessions, and had seen Mother interact with Fallon and Lydia for only one session. Mother’s therapist believed that Mother would be an adequate parent to all of the children.

On July 11, 2002, the juvenile court denied Mother’s section 388 petition as to Rogelio, Iris, Jasmine, and Fallon, but granted it as to Lydia, ordering her placed home with Mother on the conditions that they engage in conjoint and individual counseling and that Mother’s husband enroll in a parenting class. The court also granted the N.’s de facto parent status.

On October 24, 2002, Mother filed another petition for modification, seeking the return of all of her children. Mother claimed that she had attended close to 100 CSAP sessions, her husband had completed a parenting class, Lydia had already been returned home, Jasmine recently had begun four-hour unmonitored visits and was requesting overnight visits, and she had a strong bond with Rogelio, who called her “mom.” On November 7, 2002, the juvenile court scheduled a hearing on Mother’s petition in March 2003. The court also set a section 366.26 hearing for Rogelio and Iris in 120 days.

In November 2002, the N.’s reported that Mother had made false accusations to the parents of Iris’s friends that the N.’s were abusing Iris, and that Mother asked the

parents to go to court to make the N.'s look bad so her children would be removed from the N.'s home.

In December 2002, the court did not rule on Mother's petition for modification (set for hearing in March 2003), but granted Mother an extended holiday visit with Jasmine and increased Rogelio's unmonitored visits from three to six hours on Sundays. DCFS recommended a permanent plan of adoption for Iris and Rogelio, as the N.'s wanted to adopt them and had provided them a stable and loving home for three years. DCFS reported that both Rogelio and Iris were bonded with the N.'s. Rogelio loved them, calling them "mommy and daddy." Rogelio was also bonded with his two-year old foster brother, Brandon, whom the N.'s had adopted, and to another foster child in the home, Dale, then about 10 years old. DCFS also noted that Rogelio called his biological mother "Adrienne" and that she constantly reminded him that she too was his "mommy."

On March 6, 2003, the juvenile court granted Mother's petition for modification as to Jasmine and ordered her placed home with Mother. Mother agreed to the plan of adoption for Iris. As to Rogelio, Mother's petition was continued, and after several additional continuances, was heard on May 2, 2003.

On March 20, 2003, Mother filed a motion for a bonding study pursuant to Evidence Code section 730 in order to assess Rogelio's relationship with Mother, his sisters, and his foster parents before the hearing on Mother's petition and the section 366.26 hearing. DCFS filed opposition to the motion and counsel for Rogelio joined in the opposition. After a hearing on March 28, 2003, the juvenile court denied Mother's motion, stating that the court had discretion to have a bonding study but, on the evidence before it, a study was not necessary.

On April 1, 2003, Mother filed an ex parte application for appointment of an Evidence Code section 730 panel expert to review the reports and records in the case and to observe Rogelio, Mother, and his siblings in order to help counsel prepare a defense to the termination of parental rights. The juvenile court denied the ex parte application on April 2, 2003.

At the May 2, 2003 hearing on Mother's petition for modification, the court received evidence on a March 28, 2003 physical altercation between Mother and Jasmine. As to Mother's relationship with Rogelio, Mother testified that Rogelio called her "mommy" and cried at the end of their visits. Mother maintained that it was in Rogelio's best interest to be returned to her care because "[h]e is my only son that I have had besides my four lovely daughters that I love dearly. My son is the only son I will ever have. I'm a hundred percent certain my son has a bond with me as well as his sisters, Fallon and Lydia and Jasmine. He brings up the love, [happiness] in the house. There is no children in the house besides Jasmine and Lydia. It is in the best interest that my son be returned to me because he has love in our home."

Mother testified that it was not in Rogelio's best interest to stay with the N.'s because she had seen bruises on Rogelio and he had told her that Mr. N. yells at Mrs. N. Mother learned from Rogelio that Mrs. N. told him to address Mother as "Adrienne" and that Mother was "not his Mommy." When asked if the N.'s had taken good care of Rogelio, Mother responded, "I believe so. Physically, environmentally, school, and I'm very grateful. . . . [B]ut the time has come that my son be returned to me."

The court denied Mother's petition for modification, finding that it was not in Rogelio's best interest to return him home. On May 19, 2003, Mother filed a notice of appeal from the May 2, 2003 order denying her petition.

Based on the March 28, 2003 altercation between Mother and Jasmine, DCFS filed an ex parte application requesting that Mother's visits with Rogelio be monitored. On May 20, the court ordered that Mother's visits were to remain unmonitored, but only if no other siblings were present during the visit.

On June 5, 2003, the date of Rogelio's section 366.26 hearing, Mother filed a motion in limine asserting that the DCFS section 366.26 report dated June 5, 2003, was insufficient as an adoption assessment under section 366.22, subdivision (b)(3). Mother asserted that the report contained "inaccurate, biased and misleading" information about the amount and nature of the contact between Mother and Rogelio. Mother noted that the social worker observed and reported on the nature of Rogelio's relationship with his

foster parents but had refused Mother's request to observe Rogelio's interactions with Mother. Mother pointed out that a social worker had observed Rogelio with her on only three occasions after unmonitored visits began in March 2002, with the last observation being in October 2002.

At the outset of the June 5, 2003 hearing, the court denied the motion in limine, and, over Mother's objection, admitted into evidence three section 366.26 reports dated November 7, 2002, March 3, 2003, and June 5, 2003. Mother testified that Rogelio asked why Lydia was not present at his visit. Rogelio talked to Lydia on the telephone and told her that he wanted to visit and play with her. According to Mother, the benefit to Rogelio from continuing a relationship with her was "[t]he understanding that I'll always be his Mom, regardless. He has another family, his biological family, for support, for love, for [nurture]. . . . It would help him to know his roots, his heritage, his background, where he's come from, and he will benefit."

When Fallon's attorney called Fallon as a witness, the juvenile court asked for an offer of proof and her attorney said that her testimony related to her close relationship with Rogelio and the significant sibling relationship exception to termination of parental rights. Counsel for DCFS argued that the sibling exception did not apply because the N.'s had agreed to facilitate sibling visitation. The court then denied counsel's request that Fallon testify, finding her testimony irrelevant. Mr. N. then testified that he would continue to facilitate sibling visits for Rogelio and that they "have two other children that we adopted, and we have an open policy where they can see their parents." Mr. N. further testified that he and his wife were committed to adopting Rogelio and Iris and that Rogelio loved being with Iris. Mr. N. denied that Rogelio cried when they picked him up at the McDonald's restaurant after Mother's visits. Rogelio referred to Mother as "Joanna," even after they kept telling him that her name was "Adrianne."

At the June 5 hearing, Mother's attorney also cross-examined the social worker who had prepared the June 5 section 366.26 report, Josephine Sepulveda, who began working on the case in May 2003. Sepulveda admitted that Mother asked her to observe a visit between Mother and Rogelio, but Sepulveda's supervisor said that she could not

observe a visit because DCFS was not providing reunification services at that time. Sepulveda admitted that she had never observed Rogelio with any of his sisters other than Iris, that Rogelio told her that he liked to visit Fallon, and that Fallon told her during her last home visit at Mother's that she (Fallon) felt it was unfair that she did not get to visit her brother.

After the parties rested, Mother's attorney asked the juvenile court to put the matter over briefly until after the lunch hour so that mother could obtain other percipient witnesses, including Samuel A., who could testify as to the nature of Mother's bond with Rogelio. The court denied Mother's request for a brief continuance, explaining, "I don't know what additional testimony [Samuel A.] is going to bring to bear if I take everything Mother says is true, which I do. And I don't know if I need additional witnesses that are going to help me one way or the other."

In terminating parental rights, the court found that Mother had not established the beneficial relationship exception under section 366.26, subdivision (c)(1)(A), or the sibling relationship exception under section 366.26, subdivision (c)(1)(E).² With respect to the beneficial relationship exception, the juvenile court found that Mother had met the

² Section 366.26, subdivision (c)(1) provides in pertinent part: "If the court determines . . . by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. . . . A finding under subdivision (b) . . . or, under Section 366.21 or 366.22, that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights unless the court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances: [¶] (A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship. . . . [¶] . . . (E) There would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption."

first prong, requiring regular visitation and contact, but she did not establish the second prong, requiring a showing that the child would benefit from continuing the parental relationship. In finding that the sibling relationship exception did not apply, the court found that Rogelio's only long-standing sibling relationship was with Iris, and that because Mr. N. indicated that Rogelio's visits with his siblings would continue, the court was reassured that the sibling relationships would continue.

Mother filed timely notice of appeal from the June 5, 2003 order terminating her parental rights. We granted Mother's motion to consolidate her appeal from the June 5, 2003 order with her appeal from the May 2, 2003 order.

DISCUSSION

A. Section 388 Petition

Mother argues that because Rogelio shared a close bond with her and his sisters and because Mother had "successfully regained custody of [Lydia and Jasmine] and was successfully parenting them," it was in his best interest to be reunited with them. Thus, she concludes, the court erred in not granting the section 388 petition. We do not agree.

"Section 388 allows an interested person to petition the juvenile court for a hearing to change, modify or set aside a previous order if the petitioner can establish changed circumstances and that the proposed order would be in the best interests of the child. The burden of proof is on the petitioner." (*In re Clifton B.* (2000) 81 Cal.App.4th 415, 423.) When a section 388 petition is filed after reunification services have been terminated and just prior to the permanency planning hearing, the focus of the dependency proceedings has shifted from reunification to the child's need for a stable and permanent home. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 48.) Thus, the petitioner must show not only changed circumstances, but that a change in the child's placement would be in the best interests of the child. (*Ibid*; see also *Ingrid E. v. Superior Court* (1999) 75 Cal.App.4th 751, 760 [compliance with requirements of reunification plan does not mandate return of child to parental custody].) We review the juvenile court's ruling on a petition for modification for abuse of discretion. (*In re Amber M.* (2002) 103 Cal.App.4th 681, 685 (*Amber M.*))

Mother fails to establish that the denial of her petition for modification constituted an abuse of discretion. The juvenile court reasonably concluded that Rogelio's need for a stable and permanent home was being met by his placement with the N.'s, that the N.'s had met Rogelio's needs for over three of his five years, and that it was not in his best interests to change his placement. The trial court reasonably could have concluded that Mother's household was chaotic and unstable. As the trial court stated at the May 2, 2003 hearing, Mother "has got two teenage daughters [at home], and they are a handful."

Assuming for purposes of argument the existence of changed circumstances and, as claimed by Mother in her appellate briefs, that she was successfully parenting Lydia and Jasmine, the juvenile court still reasonably could have determined that, given Rogelio's successful placement with the N.'s since he was 17 months old, the proposed change in his placement would not promote stability and a sense of security. The circumstances in this case support the trial court's conclusion that a change in Rogelio's placement would not be in his best interests. No abuse of discretion is shown.

B. Beneficial Relationship Exception to Termination of Parental Rights

"Section 366.26, subdivision (c)(1) allows termination of parental rights upon clear and convincing evidence of adoptability. An exception exists if '[t]he parents . . . have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.' (§ 366.26, subd. (c)(1)(A).) A beneficial relationship is one that 'promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.' (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575) The existence of this relationship is determined by '[t]he age of the child, the portion of the child's life spent in the parent's custody, the "positive" or "negative" effect of interaction between parent and child, and the child's particular needs.' (*Id.* at p. 576.)" (*Amber M.*, *supra*, 103 Cal.App.4th at p. 689.)

The parent has the burden of establishing the existence of the beneficial relationship exception to termination of parental rights. (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1343 (*Lorenzo C.*)) We apply the substantial evidence test in

reviewing the juvenile court's findings under the beneficial relationship exception. (See, e.g., *In re Autumn H.*, *supra*, 27 Cal.App.4th at pp. 575–576.)

Substantial evidence supports the trial court's finding that Mother failed to establish that Rogelio's maintenance of a relationship with her in a tenuous placement would outweigh the benefits of adoption and a stable, secure home. Rogelio had spent the majority of his life out of Mother's custody, and she had progressed to a regular schedule of *unmonitored* visitation with him only in March 2002. Throughout 2001, Mother repeatedly expressed concern that Rogelio did not recognize her as his mother and that she was becoming estranged from him. Before Mother began her unmonitored visits with Rogelio, he already had become attached to his foster parents, whom he called "mommy and daddy." Notwithstanding the subsequent development of Mother's loving relationship with Rogelio and his enjoyment of, or derivation of some benefit from visits with Mother, these factors are not sufficient to establish the beneficial relationship exception. (See *In re Jeremy S.* (2001) 89 Cal.App.4th 514, 523 [exception is not established by loving relationship alone], disapproved on another ground in *In re Zeth S.* (2003) 31 Cal.4th 396, 413–414; *In re Angel B.* (2002) 97 Cal.App.4th 454, 466 [exception is not established by showing only that minor would derive some benefit from continued parental contact].) Substantial evidence in the record supports the juvenile court's conclusion that Mother did not establish that Rogelio would benefit more from a tenuous placement and the continuation of her relationship with him, than from a secure, permanent placement with his adoptive parents.

C. Sibling Relationship Exception to Termination of Parental Rights and Refusal to Allow Fallon to Testify

"Section 366.26, subdivision (c)(1)(E) provides an exception to termination of parental rights where termination would cause a substantial interference with the sibling relationship. If termination will substantially interfere with the sibling relationship, section 366.26, subdivision (c)(1)(E) lists numerous factors the juvenile court is to consider in determining whether the circumstance[s] of any given case warrant the application of the exception. . . . If the relationship exhibits some or all of these factors,

the juvenile court must then go on to balance any benefit, emotional or otherwise, the child would obtain from ongoing contact with the sibling against the benefit of legal permanence the child would obtain through adoption.” (*In re Erik P.* (2002) 104 Cal.App.4th 395, 403.) Once it is shown that it is likely the child will be adopted, the burden shifts to the parents to prove the sibling relationship exception. (*Id.* at p. 401.)

In this case, substantial evidence before the juvenile court established that visitation between Rogelio and his siblings would continue because the foster parents (prospective adoptive parents) expressly stated that they would facilitate sibling visitation after they adopted Rogelio. Substantial evidence also supports the juvenile court’s implied finding that Rogelio would obtain greater emotional and other benefits through adoption than through ongoing contact with Fallon, Jasmine and Lydia.

With respect to the juvenile court’s refusal to allow Fallon to testify concerning her relationship with Rogelio, we conclude that Mother fails to establish any error or that any error was prejudicial. Fallon was never placed in the same foster home with Rogelio, and in June 2003, Fallon was not placed in Mother’s home. Rogelio’s foster parents had also indicated that they would continue sibling visitation after adoption. Under these circumstances, the juvenile court reasonably could have concluded that the termination of Mother’s parental rights to Rogelio would not cause a substantial interference with the sibling relationship. Assuming the refusal of Fallon’s testimony was error, it was not prejudicial because it is not reasonably likely that her testimony would have caused the juvenile court to reach a different result under the balancing required by section 366.26, subdivision (c)(1)(E).

D. Denial of Requests for Bonding Study and for Appointment of Expert

Mother contends that the juvenile court’s denial of her requests for a bonding study and for appointment of an expert constituted a denial of her due process right to present expert evidence regarding the bond between Rogelio and Mother and between Rogelio and his siblings. Mother claims that such evidence was relevant to the issues at the section 388 and section 366.26 hearings, and because the reports by the social workers did not address the issue of the relationships between Rogelio and his biological

family members, a bonding study was critical to her defenses to the termination of her parental rights.

Although in a proceeding to terminate parental rights the juvenile court “is assuredly empowered to appoint one or more factfinding expert witnesses (Evid. Code, § 730), such action is a matter of discretion.” (*In re Jennifer J.* (1992) 8 Cal.App.4th 1080, 1084.) “There is no requirement in statutory or case law that a court must secure a bonding study as a condition precedent to a termination order. . . . [A]lthough the preservation of a minor’s family ties is one of the goals of the dependency laws, it is of critical importance only at the point in the proceeding when the court removes a dependent child from parental custody Family preservation ceases to be of overriding concern if a dependent child cannot be safely returned to parental custody and the juvenile court terminates reunification services. Then, the focus shifts from the parent’s interest in reunification to the child’s interest in permanency and stability.” (*Lorenzo C.*, *supra*, 54 Cal.App.4th at pp. 1339–1340.) Thus, while the juvenile court may have discretion to order a bonding study after the termination of reunification services under compelling circumstances, the denial of such a request is “fully consistent with the scheme of the dependency statutes, and with due process.” (*In re Richard C.* (1998) 68 Cal.App.4th 1191, 1197.)

Under the circumstances of this case, the juvenile court did not abuse its discretion in denying Mother’s request for a bonding study or for appointment of an expert because she fails to articulate any information which an expert could have offered which she, or other lay percipient witnesses, could not. Beginning in December 2002, Mother had six-hour weekly unmonitored visits with Rogelio. Mother’s husband, Samuel A., was also allowed to be present for the visits. Mother already demonstrated that she could sense and articulate when she was becoming estranged from Rogelio earlier in the case, and the juvenile court reasonably could have inferred that she was equally capable of sensing and articulating the strength and nature of her developing bond with Rogelio later in the case after she was afforded unmonitored visitation with him. Mother was also capable of telling the court about the types of activities they engaged in together, how they behaved

with each other, and the nature of their relationship. In fact, Mother did so testify. It is difficult to imagine what an expert witness could have contributed to the evidence already before the court or that was not capable of being placed before the court by lay percipient witnesses. Accordingly, the juvenile court did not abuse its discretion by refusing Mother's request for a bonding study and for appointment of an expert.

E. Adoption Assessment Report and Social Worker's Refusal to Observe Visits

Mother claims that the adoption assessment reports in this case were incomplete and insufficient as a matter of law because they failed to "contain any information regarding the nature of the relationship between Rogelio and Adrianne and his sisters" Yet the reports contain, among other things, information about the length and frequency of Rogelio's visits and the nature of his contacts with Mother and his siblings since the time of placement.

Section 366.26, subdivision (b) provides in pertinent part: "Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency . . . to prepare an assessment that shall include: [¶] . . . [¶] (2) A review of the amount and nature of any contact between the child and his or her parents and other members of his or her extended family since the time of placement. . . ."

Mother fails to provide any legal authority supporting her claim that section 366.26, subdivision (b)(2) requires anything more than what was contained in the reports in this case. She intimates that the reports are required to contain the type of expert evaluation or extensive psychological analysis that may be contained in a bonding study or expert evaluation, but she provides no authority to support such a reading of the statute, which would be inconsistent with the discretion afforded the juvenile court in the first instance to order a bonding study or to appoint an expert witness. Mother also suggests that the adoption assessment reports are required to contain more specific information which may support (or invalidate) the beneficial relationship exception and the sibling relationship exception to termination of parental rights. Again, no authority is cited to support such a statutory interpretation, which would be inconsistent with the case

law which states that the parent has the burden of establishing the beneficial relationship and sibling relationship exceptions to termination of parental rights. We thus conclude that Mother fails to establish that the adoption assessment reports were insufficient.

Mother complains about the social worker's refusal to observe her visits with Rogelio after termination of reunification services and on the eve of the section 366.26 hearing. Yet Mother fails to show that such refusal violated any law or court order, or that she was prejudiced by the social worker's refusal. Mother fails to explain what evidence a social worker would have been able to provide after observing her visit with Rogelio that Mother herself, or another percipient witness to the visit, would not have been able to provide. We conclude that the refusal of the social worker to observe Mother's visitation with Rogelio after reunification services were terminated affords no basis to reverse the orders of May 2 or June 5, 2003.

DISPOSITION

The orders of May 2, 2003, and June 5, 2003, are affirmed.

NOT TO BE PUBLISHED.

MALLANO, J.

We concur:

SPENCER, P. J.

VOGEL (MIRIAM A.), J.